

Decision DRAFT DECISION OF ALJ BARNETT (Mailed 6/7/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338 E) for Authority to Lower and Adjust Retail Electric Rates for All Customer Classes Upon Completion of Full Recovery of Procurement Related Obligations Account.

Application 03-01-019  
(Filed January 17, 2003;  
Petition Filed  
October 31, 2003)

**DECISION DENYING WITHOUT PREJUDICE THE  
PETITION OF VISALIA SENIOR HOUSING  
FOR MODIFICATION OF DECISION 03-07-029**

Petitioner, Visalia Senior Housing dba Town Meadows,<sup>1</sup> requests modification of Decision (D.) 03-07-029 to correct what it believes to be an unintended consequence of that decision. Petitioner asserts that the decision intended to eliminate the energy procurement surcharge and reduce rates for all customers, but that as a result of the decision a small group of Southern California Edison (SCE) customers – namely, low-income group living facilities on the California Alternate Rates for Energy Program (CARE) - actually are paying about 14 - 86% more under the new rates than they paid under pre-surcharge rates.<sup>2</sup> Petitioner says this outcome is contrary to the Commission's goal of protecting low-income ratepayers from the consequences

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<sup>1</sup> Petitioner is a California non-profit corporation that owns a low-income senior housing facility located in Visalia, California.

<sup>2</sup> This percentage increase refers only to the energy charge under the new rates. Demand and customer charges have not changed.

of the California energy crisis of 2000-2001. Therefore, Petitioner requests the decision be modified to eliminate the rate increase that resulted for low-income group living facilities that are on CARE.

In early 2001, the Commission authorized rate surcharges to address the financial upheaval resulting from the energy crisis of 2000-2001. (D.01-03-082 and D.01-05-064.) On October 5, 2001 the United States District Court approved a settlement between SCE and the Commission that, among other things, established settlement rates and new ratemaking mechanisms effective as of September 1, 2001 (the federal settlement).

On November 14, 2001, SCE filed Advice 1586-E to establish the Procurement Related Obligations Account (PROACT) and an associated ratemaking structure consistent with the federal settlement. SCE's federal settlement called for the rate surcharges to be removed once the balance in SCE's PROACT had been fully recovered. In Application (A.) 03-01-019, SCE sought authority to lower its retail electric rates by approximately \$1.25 billion after full recovery of its PROACT balance. The parties to the proceeding began settlement discussions that culminated in a duly noticed settlement conference on April 17, 2003, where the parties entered into a settlement agreement allocating the \$1.25 billion rate reduction among the various classes of customers.

In D.03-07-029, the Commission approved the settlement agreement and the new rates. In adopting the settlement agreement, the decision states that "[t]he Settlement Agreement avoids the cost and delay of further litigation and brings rate relief to customers in all rate groups." (Decision at 12.) However, Petitioner asserts, contrary to the Commission's understanding, low-income non-profit group living facilities taking service under Schedule GS-2T that receive CARE rates have not been given rate relief, but instead have been subjected to

energy charges that are approximately 14 – 86% more than the pre-settlement rates.

Under the pre-settlement rates, Petitioner took service under SCE's Schedule GS-2T, a general service schedule applicable to customers with maximum demands of less than 500 kilowatts (kW). Because Petitioner qualified as a "nonprofit group living facility"<sup>3</sup> under SCE's Tariff Preliminary Statement, Section 0.3.f., it received two significant rate discounts under the CARE program.

First, in accordance with D.01-05-064 and D.01-01-018, Petitioner was exempted from the surcharges that the Commission adopted in D.01-01-018 and D.01-03-082. Second, in accordance with D.01-06-010, Petitioner received a 20% reduction off its otherwise applicable rates. This meant that the Petitioner's 20% discount was applied to the rates that were being charged prior to adoption of the surcharges.

As a result of these CARE-related rate discounts, Petitioner paid an effective energy charge of less than \$.064/kWh for all of its electricity usage. This effective energy charge is determined as follows: After surcharges the GS-2T energy charges were \$.10592 to \$.17880/kWh,<sup>4</sup> but a significant portion of those energy charges consisted of the surcharges from which Petitioner was exempt, leaving Petitioner responsible for \$.07952/kWh for all time-of-use periods. A

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<sup>3</sup> Pub. Util. Code § 739.1(e) directs the Commission to include these "nonprofit group living facilities" in the Commission's program of assistance to low-income customers if "the residents in these facilities substantially meet the commission's low-income eligibility requirements and there is a feasible process for certifying that the assistance shall be used for the direct benefit . . . of the low-income residents in the facilities."

<sup>4</sup> The actual charge would depend on the time of day and year that the energy was used.

further discount of 20% was applied to this amount to arrive at Petitioner's effective energy charge of \$.064/kWh for all time-of-use periods.

Petitioner claims that the post-settlement rates that are applicable to Petitioner, and which were adopted in D.03-07-029, are 14 – 86% higher than pre-settlement rates.<sup>5</sup> Under these new rates, the new energy charges for GS-2T customers range from \$.09101/kWh (winter off-peak) to \$.14863/kWh (summer on-peak). Unlike the case under the pre-settlement rates, there is no reduction in Petitioner's post-settlement rates on the basis of Petitioner's exemption from the surcharges because the post-settlement rates already reflect the Commission's elimination of the surcharges. However, since Petitioner qualifies for CARE, 20% is deducted from the energy charges (just as it was under the pre-settlement rates), which reduces the effective rate to between \$.073/kWh (off-peak winter) and \$.119/kWh (summer on-peak).

Petitioner contends that it (and other CARE-qualifying low-income group living facilities) is paying higher rates under the post-settlement regime than it was under the pre-settlement regime.<sup>6</sup> Pre-settlement rates were \$.064/kWh for all usage, while post-settlement rates range from \$.073/kWh (off-peak winter) to \$.119/kWh (summer on-peak). This rate increase brought about by D.03-07-029 affects a small group of customers, *i.e.*, those customers who, like Petitioner, are CARE-qualifying non-profit group living facilities that are served on a GS rate

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<sup>5</sup> The amount of the comparative increase depends on the customer's particular time-of-use profile.

<sup>6</sup> Petitioner alleges that as a result of D.03-07-029 its electricity rates have increased approximately 23% or about \$14,500 per year. SCE does not dispute this. There is no evidence regarding the total increased costs to customers similarly situated.

schedule. All other customers' rates have been reduced by the post-settlement rates. The settlement agreement adopted by D.03-07-029 sets forth a comparison of pre- and post-settlement rates, and shows that the GS-2 post-settlement rates were 14 – 16% lower than the GS-2 pre-settlement rates.<sup>7</sup> However, in comparing pre- and post-settlement rates, the settlement agreement failed to consider the situation where the GS-2 customer is also a CARE recipient, as in Petitioner's case. In such a case, the pre-settlement rates are not \$.10592/kWh to \$.17880/kWh as depicted in the settlement agreement. Instead, the exemption from the surcharges and the 20% discount result in a pre-settlement rate of \$.064/kWh for these customers. Consequently, while the post-settlement rates were reduced for GS customers who did not qualify for CARE, they produced a significant increase for customers who did qualify for CARE.

Petitioner observes that D.03-07-029 did not increase the rates of domestic customers. Those rates had been exempt from the surcharges and had also received the benefit of the 20% CARE discount, where appropriate. As a result, domestic schedule ratepayers' post-settlement rates were the same as pre-settlement. CARE eligible ratepayers on the GS-2 schedule were not so fortunate.

SCE argues that the Commission should deny the petition because Petitioner's current post-PROACT electric rate fully complies with the CARE discount adopted in D.01-06-010 and applied in D.03-07-029. Granting the petition and restoring those customers to their rates in effect prior to D.03-07-029, will afford those customers an effective discount of some 35-40% off

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<sup>7</sup> GS-2 average pre-settlement rate 15.268¢/kWh; GS-2 average post-settlement rate 13.314¢/kWh; a difference of 12.8%. These rates are total rates. (D.03-07-029, p. 13.)

the otherwise applicable tariff. Granting the petition will merely postpone for another day the resolution of the appropriate rate level to which the CARE discount applies.

CARE customers, including Petitioner, were exempted from the imposition of the 1 and 3 cent per kWh surcharges when they were imposed in D.01-03-082 and D.01-05-064. Commercial facilities eligible for the CARE discount taking service under the GS-2 schedule continued to be charged a rate that was discounted 20% off the non-surcharged (or pre-surcharged) rate. Because of the effect of this exemption, these CARE customers received an effective discount of 40-50% compared to non-CARE customers on the same tariff.

D.03-07-029 approved SCE's \$1.25 billion rate decrease and returned to bottoms-up rate design. It did not return all customers to pre-surcharge rate levels, given the need to provide for recovery of Department of Water Resources (DWR) costs. Surcharges as such, though, were eliminated, and SCE's post-PROACT rate design includes charges for recovery of both SCE and DWR generation costs. In D.03-07-029, the effective domestic CARE rate was not changed. Commercial customers, including those taking service on GS-1 and GS-2 tariffs, saw their rates decline by 18.3 and 12.8 percent, respectively, from their surcharged levels. Discounting the GS-2 rate by the 20% required by Pub. Util. Code § 739.1 yields a CARE-discounted rate that is higher than the double-discounted rate Petitioner previously paid, which was a discount off a rate which excluded adopted surcharges.

SCE argues that granting the petition so as to return Petitioner to its prior double-discounted rate through operation of the "no increase" language requested, would produce a rate discounted some 35 – 40% off the otherwise

applicable GS-2 rate, as much as double the discount the Commission requires in a CARE rate. Moreover, SCE adds, granting the petition will give the Commission this same problem to address once again in Phase 2 of SCE's General Rate Case (GRC). For there the Commission will decide the proper allocation of SCE's revenue requirement across all rate groups, something SCE proposes should occur on a cost-causation basis, with each rate group (prior to the CARE discount) bearing its share of the costs of SCE's service. D.01-06-010 requires the Commission to provide for a CARE rate discounted 20% off the rate calculated in this cost-based manner. If the Commission grants this petition, it will be required to reverse its action when it decides Phase 2 of SCE's GRC.

#### Discussion

Petitioner has couched its petition in terms of reductions in the energy charge of the GS-2 rate while SCE has responded in terms of the total rate, conceding the basic factual thrust of the petition. Both have addressed the central issue of whether Petitioner is entitled to its pre-settlement rate less 20%, or must pay the post-settlement rate less 20%.

We cannot overlook the fact that rates in D.03-07-029 were the result of a duly noticed settlement pursuant to Rule 51 of the Commission's Rules of Procedure which had representatives of all economic strata participating. To permit a nonparticipant to modify a duly authorized settlement weakens the foundations of Rule 51. Petitioner is not without remedy. Petitioner may raise its concerns in the rate allocation phase of SCE's GRC, which will have a prehearing conference in May 2004.

Further, we are reluctant to modify a settlement after the expiration of the filing date for applications for rehearing. (*See, Northern Cal. Ass'n v. PUC* (1964) 61 C.2d 126.) Rule 51 provides an elaborate system for settling controversial

matters; Rule 51.6 provides for contesting a settlement; and Rule 51.8 provides that “Commission adoption of a stipulation or settlement is binding on all parties to the proceeding....” Had Petitioner been a party to Application (A.) 03-01-019 it would have been bound by D.03-07-029, and left to its appellate remedies. It should not be accorded greater rights because it failed to timely appear. No good reason has been presented for us to modify D.03-07-029 when this exact issue may be raised in the forthcoming rate allocation phase of SCE’s GRC.

Therefore, we do not reach the merits of this dispute. This is an issue that should be resolved in the pending SCE GRC. A prehearing conference on rate allocation issues is scheduled where all affected parties may present their positions. Petitioner’s issue is contained in a zero-sum allocation. A reduction in rates to one group of ratepayers results in an increase in rates to a different group. We must “balance the equities.” (D.01-06-010, p. 14.) The GRC provides the opportunity for all affected groups to participate and present evidence on any proposed allocation.

**Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by SCE which support the draft decision. Petitioner did not file comments.

**Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.



**Findings of Fact**

1. D.03-07-029 approved SCE's \$1.25 billion rate decrease and returned to bottoms-up rate design. It did not return all customers to pre-surcharge rate levels, given the need to provide for recovery of DWR costs.
2. Surcharges were eliminated, and SCE's post-PROACT rate design includes charges for recovery of both SCE and DWR generation costs.
3. In D.03-07-029, the effective domestic CARE rate was not changed.
4. Customers taking service on GS-1 and GS-2 tariffs saw their rates decline by 18.3 and 12.8 percent, respectively, from their surcharged levels.
5. Discounting the GS-2 rate by the 20% required by Pub. Util. Code § 739.1 yields a CARE-discounted rate that is higher than the discounted rate Petitioner previously paid, which was a discount off a rate which excluded adopted surcharges.
6. Rates in D.03-07-029 were the result of a duly noticed settlement pursuant to Rule 51 which had representatives of all economic strata participating.
7. Had Petitioner been a party to A.03-01-019 it would have been bound by D.03-07-029, and left to its appellate remedies. It should not be accorded greater rights because it failed to timely appear.
8. To permit a nonparticipant to negate a duly authorized settlement weakens the foundations of Rule 51.
9. Petitioner's issue may be raised in the forthcoming rate allocation phase of SCE's GRC.

**Conclusions of Law**

1. Petitioner has an adequate remedy to pursue its issue in the pending SCE GRC.
2. The petition should be denied without prejudice.

**O R D E R**

**IT IS ORDERED** that:

1. The petition of Visalia Senior Housing dba Town Meadows to modify Decision 03-07-029 is denied without prejudice.

2. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.